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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 565

WRIGHT & TAYLOR, INC., PETITIONER,

vs.

ROBERT H. LUCAS, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF KENTUCKY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 28, 1930

CERTIORARI GRANTED DECEMBER 8, 1930

(35,487)

(35,487)

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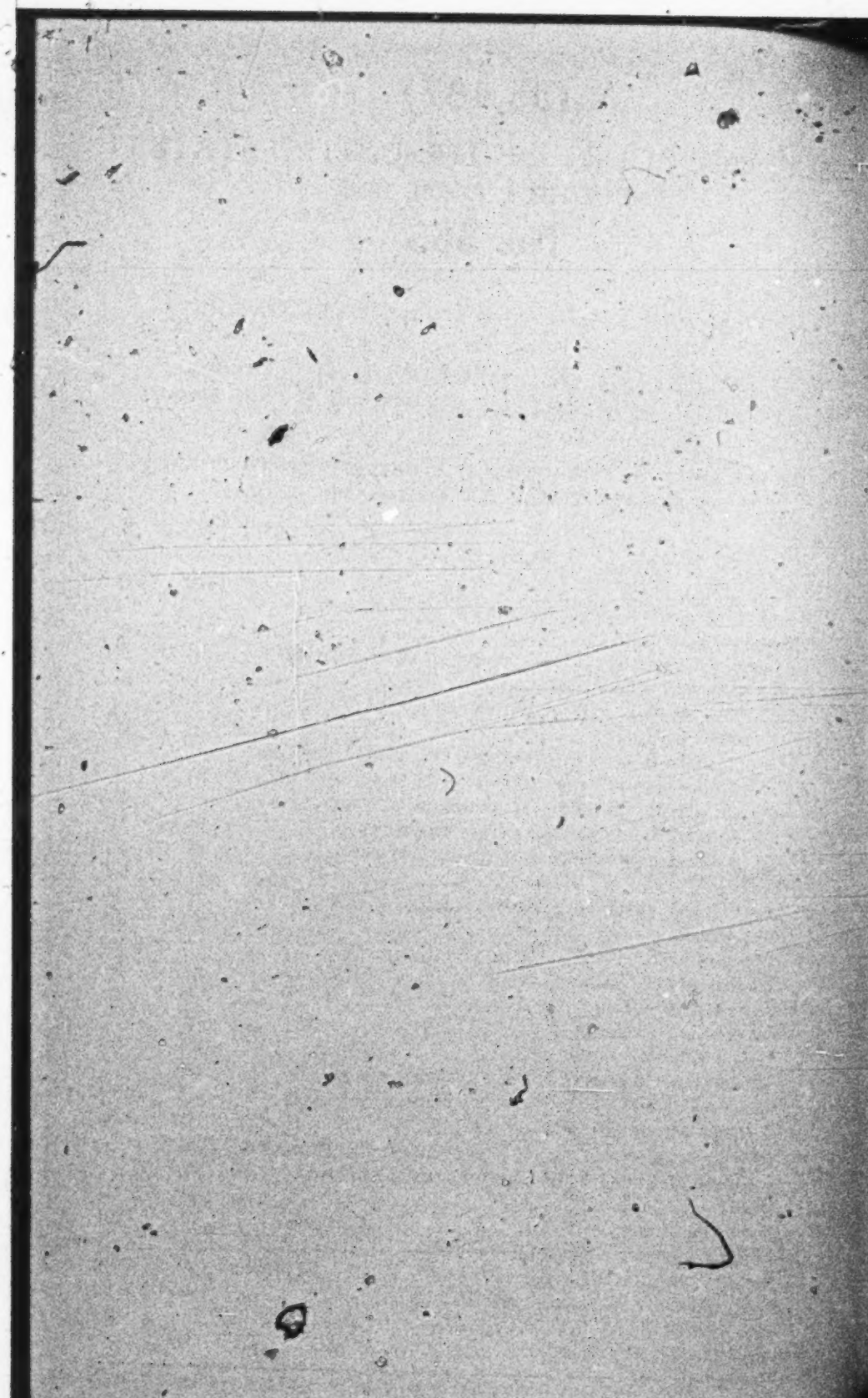
JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 8, 1930



[fols. a & 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF KENTUCKY

Present: Honorable Chas. I Dawson, Judge.

#927

WRIGHT & TAYLOR, INCORPORATED, Plaintiff,

v.

ROBERT H. LUCAS, Collector of Internal Revenue for the United States of America, Defendant

PETITION—Filed April 14, 1927

The plaintiff, Wright & Taylor, Inc., states that it is a corporation organized and existing under and by authority of the laws of the State of Kentucky, with authority to sue and be sued in its corporate name; that its principal office and place of business is in Louisville, Ky., that the defendant, Robert H. Lucas, is a duly appointed and acting Collector of Internal Revenue for the United States of America for the Fifth District of Kentucky and as such demanded and collected the sums of money hereinafter referred to, and which are sought to be recovered in this action.

The amount in controversy in this action exceeds the sum of $3,000.00, exclusive of interests and costs, and the defendant, Robert H. Lucas, is a resident and citizen of Jefferson County, Ky.

The plaintiff states that heretofore it made a return of gross and net income collected by it for the fiscal year ending June 30, 1918, as required by the Revenue Act of 1917 and the Revenue Act of 1918; that its said return for the [fol. 2] year ending June 30, 1918, under the Revenue Act of 1917 was filed during the month of August, 1918; that on or about June 14, 1919, it filed a supplemental return for the fiscal year ending June 30, 1918, as required by the Revenue Act of 1918; that its return filed in August, 1918, for the fiscal year ending June 30, 1918, as required

by the Revenue Act of 1917, showed a total tax due, computed under the provisions of the Revenue Act of 1917 and the Revenue Act of 1916, as amended by the Revenue Act of 1917 without the benefit of Section 210 of the said Revenue Act of 1917, of $240,077.31; that it thereupon made application to the Commissioner of Internal Revenue to have its profits tax for the 1917 portion of the fiscal year ending June 30, 1918, determined and assessed in accordance with the provisions of Section 210 of the Revenue Act of 1917; that in December, 1918, after an oral conference in the office of the Commissioner of Internal Revenue at Washington, D. C., it was notified that its application for the assessment of its profits tax under Section 210 of the Revenue Act of 1917 was granted, and that the total tax due for the year ending June 30, 1918, computed under the Revenue Act of 1917 was $165,788.32, of which one half, or $82,894.16 was the amount due for the 1917 half of the year ending June 30, 1918; that in December, 1918, it filed a claim for abatement of $74,288.99 income and profits taxes for the year ending June 30, 1918, this being the difference between the amount shown to be due on the original return and the total tax due after the profits tax had been computed by the Commissioner of Internal Revenue under Section 210 of the Revenue Act of 1917.

The plaintiff states that on or about June 14, 1919, it filed a supplemental return for the year ending June 30, 1918, as required by the Revenue Act of 1918; that said supplemental return showed an additional income and profits tax due for the 1918 half of the year ending June 30, 1918, under the provisions of the Revenue Act of 1918 of $85,186.71; that of this amount $31,462.86 was paid at the time of the said supplemental return was filed, and that on the same date a claim for the abatement of the balance, to-wit: $53,723.85, was filed with the Collector of Internal Revenue at Louisville, Kentucky; that in September, 1919, it received notice of an additional assessment of income and profits taxes for the year ending June 30, 1918, in the sum of $26,376.29 and at the same time payment of this amount was demanded by the Collector of Internal Revenue, Louisville, Kentucky, and the plaintiff filed with the [fol. 3] Collector of Internal Revenue at Louisville, Kentucky, a claim for abatement of the entire amount of $26,376.29.

The plaintiff states that no other assessments were made and that no steps were taken or proceedings instituted to effect collection of any of the above amounts, or any part thereof, until August 27, 1925, at which time the defendant, Robert H. Lucas, Collector of Internal Revenue at Louisville, Ky., demanded payment of $136,507.05, together with a large amount of interest as additional income and profits taxes alleged to be due for the fiscal year ending June 30, 1918; that after the said defendant Robert H. Lucas threatened to seize and sell the property of the plaintiff unless payment was made, the plaintiff paid the said defendant, on September 4, 1925, the sum of $62,319.16, plus interest of $22,490.35 making a total payment of $84,809.51; that the entire amount was paid under protest and duress in order to avoid the carrying out of the defendant's threat to seize and sell the plaintiff's property.

The plaintiff states that on or about September 30, 1925, it filed with the defendant, Robert H. Lucas, Collector of Internal Revenue at Louisville, Kentucky, a claim for refund of the entire sum of $84,809.51, referred to above; that more than six months have elapsed since said claim was filed and that said claim for refund has never been allowed or rejected by the defendant, or the Commissioner of Internal Revenue, or any one else authorized to pass on said claim; a copy of said claim for refund is filed herewith marked Exhibit "A."

The plaintiff states that at the time the taxes and interest herein sued for were paid by it to the defendant under protest and duress, there was no waiver or other agreement, extending the time for assessment or collection of any income or profits taxes beyond that fixed by the statutes, then in effect; that on or about December 13, 1923, the plaintiff had signed such a waiver or agreement and delivered it to the Commissioner of Internal Revenue; that said waiver or agreement by its terms and as one of the conditions therein expired one year from date thereof; that said waiver or agreement expired on December 13, 1924.

The plaintiff states that by the terms of Section 250 (d) of the Revenue Act of 1921, it is provided that no suit or proceeding for the collection of any income or profits taxes claimed to be due for any fiscal year ending in the year 1918 shall be begun after the expiration of five years after the

[fols. 4 & 5] return was filed; that the plaintiff filed its income and profits tax return for the year ending June 30, 1918, upon the dates herein stated, to-wit: the return for the 1917 half of the fiscal year ending June 30, 1918, was filed on or about August 15, 1918, as required by the Revenue Act of 1917, and a supplemental return for the 1918 half of the fiscal year ending June 30, 1918, was filed on or about June 14, 1919, as required by the Revenue Act of 1918, and Treasury decision #2650 promulgated thereunder; that no suit or proceeding for the collection of any additional income or profits taxes for the year ending June 30, 1918, was begun prior to August 28, 1925, when the plaintiff was threatened with a distraint proceeding unless the additional income and profits taxes of $62,319.16 plus interest in the sum of $22,490.35 sued for herein was paid; that at that time, to-wit: August 28, 1925, more than five years had elapsed since the plaintiff's income and profits tax returns had been filed as required by law and the threatened distraint proceedings were illegal and void by reason of the expiration of said five year period; that the collection of said income and profits tax for the year ending June 30, 1918, in the sum of $62,319.16 and interest in the sum of $22,490.35 was illegal and void and the entire amount, to-wit, $84,809.51 is now due and owing to the plaintiff from the defendant, Robert H. Lucas, together with interest from September 4, 1925; that the plaintiff had demanded payment of said amount from the defendant, but no part of same has been paid.

Wherefore, the plaintiff, Wright & Taylor, Inc., prays for judgment against the defendant, Robert H. Lucas, Collector of Internal Revenue for the United States of America, in the sum of eighty-four thousand, eight hundred and nine dollars and fifty-one cents ($84,809.51), together with interest at the rate of 6% per annum from September 4, 1925, until paid, for its cost herein expended and for all further and proper relief.

S. Lyman Barber, Miller & Chevalier, Attorneys for Plaintiff.

Duly sworn to by Thomas B. Bullitt. Jurat omitted in printing.

[fol. 6] EXHIBIT "A" TO PETITION

(Execute Separate Form for Each Tax Period)

Treasury Department, Internal Revenue Service. Form 843—Jan., 1922. Comptroller General U. S. January 18, 1922.

Important: File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

Collector's Notation: District: ——. Account number: ——. Date received: ——. Stamp here: —— ——, Collector of Internal Revenue.

Date received by Administrative Unit: ——. Stamp here: —— ——.

Notice to Collector

Collector must indicate in block above the kind of claim, except in Income Tax cases.

Claim for

☐ Abatement of Tax Assessed
☐ Credit Against Outstanding Assessments
☐ Refund of Taxes Illegally Collected
☐ Refund of Amounts Paid for Stamps Used in Error or Excess

STATE OF KENTUCKY,
County of Jefferson, ss:

Type or Print: (Name of taxpayer or purchaser of stamps) Wright & Taylor, Inc., (Residence—give street and number as well as city or town and State) Francis Building, (Business address) Louisville, Ky.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

Period	Year
From July 1	1917
To June 30	1918

1. Business in which engaged: Owner and operator of Office Building.

2. Character of assessment or tax: Income and profits tax. (State for or upon what the tax was assessed or the stamps affixed.)

3. Amount of assessment or stamps purchased: Tax paid $277,452.42; Int. pd. 22,490.35 $299,942.77

4. Reduction of Tax Liability requested (Income and Profits Tax): Tax $62,319.16; Int. 22,490.35 ..... 84,809.51

5. Amount to be abated ....

[fol. 7] 6. Amount to be refunded (or such greater amount as is legally refundable 84,809.51

7. Dates of payment (see Collector's receipts or indorsements of canceled checks). (If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed: Louisville, Ky.

9. District in which unpaid assessment appears: ——.

10. Amount of overpayment claimed as credit ....

11. Unpaid assessment against which credit is asked; period from —— —, ——, to —— —, —— ....

Deponent verily believes that this application should be allowed for the following reasons:

In August, 1918, this taxpayer filed its return for the year ending June 30, 1918, under the Revenue Act of 1917. The total tax shown to be due under the technical provisions of the Revenue Act of 1917 amounted to $240,077.31. The taxpayer then requested that its tax liability for the year ending June 30, 1918, be determined under Section 210 of the Revenue Act of 1917. This application was granted and the total tax for the year was fixed at $165,788.32, with the understanding that an adjustment would be made for the 1918 half of the year, under the Revenue Act of 1918. The taxpayer was directed by the Commissioner of Internal Revenue to pay this amount, and file a claim for abatement for the balance of $74,288.99. This was done in December, 1918. On June 14, 1919, the taxpayer filed its supplemental return for the 1918 half of the fiscal year ending June 30, 1918, in accordance with the Revenue Act of 1918, showing

additional taxes due in the sum of $85,186.71 for the 1918 half of the taxable year ending June 30, 1918, of this amount $31,462.86 was paid June 14, 1919, and claim for abatement of the balance was filed. In Sept., 1919, the taxpayer received notice and demand of additional taxes for the year ending June 30, 1918, in the sum of $26,376.29. We have no information as to when this assessment was actually made by the Commissioner of Internal Revenue, but it appeared on the Collector's list of August, 1919, page 9, line 3. A claim for abatement covering this additional assessment was also filed.

After the above assessments were made, and claims for abatement filed no steps were taken or proceedings instituted by the Commissioner to effect the collection of the assessments until August 27, 1925, when a representative of the local collector's office appeared at the office of this taxpayer and demanded a waiver for the year ending June 30, 1918, and when a waiver was refused, the levying of an immediate distraint for $62,319.16 taxes and $22,490.35 interest was threatened. In order to avoid the carrying out of the threat to distrain and sell the property of this taxpayer, it paid the entire amount of the tax in the sum of $62,319.16 and interest in the sum of $22,490.35 under protest and duress on Sept. 4, 1925.

Since the assessments involved here were made prior to the passage of the Revenue Act of 1924, their collection is controlled by the Revenue Act of 1921, and since it is clear that more than five years had elapsed since the assessments were made and before any proceedings were begun to collect the taxes claimed to be due, it is submitted that collection of all of these assessments was barred by the statute of limitations and the threatened distraint was illegal.

It is also submitted that no part of the tax of $62,319.16 or interest of $22,490.35 was in fact due, because the income and profits taxes in question were the result of the disallowance of assessment of the profits tax for the 1917 half of the year ending June 30, 1918, under Section 210 of the Revenue Act of 1917, which matter had been adjudicated by a former Commissioner with all the facts before him, and the disallowance of obsolescence of good will for the 1918 half of the year, which had previously been allowed us.

An oral conference is requested when this matter is ready for consideration by the Department.

[fol. 8] IN UNITED STATES DISTRICT COURT

AMENDED PETITION—April 2, 1928

The plaintiff, Wright & Taylor, Inc., by leave of the Court, amends its petition herein and states as follows: That after its supplemental income tax return for the fiscal year ending June 30, 1918, was filed on or about June 14, 1919, the Commissioner of Internal Revenue computed and made a final determination of the income and profits tax liability of the plaintiff for the year ending June 30, 1918, and issued a letter setting forth the detailed computation of said final determination. A copy of said letter is filed herewith and made a part hereof marked Exhibit "B."

The plaintiff states that the said letter determined that total taxes due for the 1917 half of the fiscal year ending June 30, 1918, computed under Section 210 of the Revenue Act of 1917, was $82,894.16, and that the total tax for the 1918 half of said fiscal year computed under the provisions of the Revenue Act of 1918 was $183,559.44, making a total tax of $266,453.60 for the fiscal year ending June 30, 1918, and that in addition to the $240,077.31 shown to be due on the plaintiff's original return an additional assessment of $26,376.29 for said fiscal year ending June 30, 1918, was indicated.

The plaintiff states further that in accordance with the said final determination of income and profits taxes due for the said fiscal year ending June 30, 1918, the Commissioner of Internal Revenue did in fact make an additional assessment of income and profits taxes for said year in the sum of $26,376.29, in August, 1919, and the Collector of Internal Revenue at Louisville, Kentucky, issued his notice and demand for the payment of said amount. The original "duplicate" of said notice and demand is filed herewith marked Exhibit "C."

The plaintiff states that no other assessment of income or profits taxes for the fiscal year ending June 30, 1918, was made after the assessment of August, 1919, and that

said sums of $240,077.31 and $26,376.29, or a total of $266,-453.60 constituted the only valid and outstanding assessments then in existence and that no other outstanding assessment was in existence on August 27, 1925, when the defendant, Robert H. Lucas, Collector of Internal Revenue, demanded and collected of the plaintiff $62,319.16 as additional income and profits taxes for the said fiscal year plus interest in the sum of $22,490.35, making the total amount of $84,809.51 demanded and collected on said accounts.

[fol. 9] The plaintiff states it paid income and profits taxes for the fiscal year ending June 30, 1918, in the sum of $215,133.93; and that the Commissioner of Internal Revenue and the defendant, Robert H. Lucas, credited a refund of $3,674.73 due the plaintiff on account of overpayment of income taxes for the fiscal year ending June 30, 1920, on the unpaid assessment for the fiscal year ending June 30, 1918. The plaintiff states that said credit was entered on or about November 25, 1924, and a copy of the certificate of overassessment and credit is filed herewith and made a part hereof, marked Exhibit "D." The plaintiff states further that the Commissioner of Internal Revenue and the defendant, Robert H. Lucas, credited a refund of $399.03 due the plaintiff on account of overpayment of income taxes for the fiscal year ending June 30, 1922, on the unpaid assessment for the fiscal year ending June 30, 1918. The plaintiff states that said credit was entered on or about November 25, 1924, and a copy of the certificate of overassessment and credit is filed herewith and made a part hereof, marked Exhibit "E."

The plaintiff states that by reason of the above payments and credits it is entitled to credit of total payments of $219,207.64 to be applied against the total income and profits taxes due for the fiscal year ending June 30, 1918; that after crediting said payments against the total assessment of $266,453.60 for the said year a deficit in payment of only $47,245.91 remained at the time the defendant demanded and collected $62,319.16 additional income and profits taxes, plus interest of $22,490.35, from the plaintiff, and that it is entitled to recover from the defendant $20,-695.83 irrespective of the statute of limitations as to collection, for the reason that no valid assessment was in ex-

istence at the time it was collected under threat of distraint.

The plaintiff reiterates and reaffirms each and all its allegations in its original petition herein, setting forth its claim that the collection of the entire amount of tax and interest sued for herein was barred by the statute of limitations at the time of collection under threat of distraint.

Wherefore, plaintiff prays as in its original petition herein.

S. Lyman Barber, Miller & Chevalier, Attorneys for Plaintiff.

[fol. 10] *Duly sworn to by Thomas B. Bullitt. Jurat omitted in printing.*

EXHIBIT B TO AMENDED PETITION

Copy

Office of Commissioner of Internal Revenue.
IT:T:SM. GWJ—51,750,632. (A-2 letter, Revised.)

Treasury Department, Washington

July 18, 1919.

Wright and Taylor, distillers and wholesale liquor dealers, 123 West Main Street, Louisville, Kentucky.

SIRS: Further reference is made to your sundry letters, telegrams, and personal conferences concerning your income and excess profits tax returns for the fiscal year ended June 30, 1918. In direct answer to your telegram of July second, you are advised that the statutes do not permit the constructive capital determined under Section 210 of the Act of October 3, 1917, to be used in making supplemental returns for the same fiscal year under the Revenue Act of 1918.

Your original income and excess profits tax returns for the year ended June 30, 1918, were filed under the provisions of the Act of 1917, indicating a tax of $240,077.31. The tax, however, was finally adjusted under Section 210 [fol. 11] of the Revenue Act of 1917 upon the basis of a constructive capital of $2,251,523.70, and a taxable net income of $652,941.85, the result of which was a total tax for the fiscal year, computed under the 1917 Act, of $165,788.32,

one-half of which, or $82,984.16, was the proper proportion for six months of the year 1917.

The second half of the taxable year is assessed under the provisions of the Act of 1918, and the amount of $183,559.44 should be added to the sum of $82,894.16, taxed for the six months of the year 1917, resulting in a total tax for the fiscal year ended June 30, 1918, of $266,453.60, subject to revision under your application for adjustment as provided in Sections 327 and 328 of the Act of 1918.

Complete summary of computations referred to in the foregoing paragraphs is as follows:

Tax Calculated under the Provisions of the Act of 1917

Adjusted capital under Section 210			$2,251,523.70
9% deduction	$202,637.13		
Specific allowance	3,000.00		
Total deduction			205,637.13
Net income as reported	$666,106.52		
Plus interest on U. S. bonds, excess $5,000	1,835.33		
	$667,941.85		
Less dividends (1913)	15,000.00		
Net income subject to excess profits tax			652,941.85
Excess profits tax for full year			134,491.42
Net income	$666,106.52		
Less excess profits tax	134,941.42		
	$531,615.10	2%	$10,632.30
Less 1913 dividends	15,000.00		
	$516,615.10	4%	$20,664.00
Income tax			31,296.90
Total tax for full year under 1917 law			165,788.32
Six-twelfths of which is applicable to taxable year			82,894.16

Tax Calculated under the Provisions of the Act of 1918

Net income for taxable year			$646,903.06
Invested capital as reported			$1,469,254.71
[fol. 12] Excess profits credit:			
8% of capital	$117,540.38		
Specific exemption	3,000.00		
		$120,640.38	
War profits credit:			
Average prewar	$154,489.36		
Plus 10% increase	77,693.88		
Specific exemptions	3,000.00		
		$335,183.24	
Total war profits and excess profits tax			$329,375.86
Net income		$646,903.06	
Less interest	$1,002.00		
War profits	329,375.86		
Specific	2,000.00		
		$332,377.86	
Amount subject to income tax		$314,425.20	
12%			37,743.02
Total war and excess profits and income taxes for full taxable year			$367,118.88
Six-twelfths applicable for second half of fiscal year			183,559.44

Summary

Amount of taxes for the first six months of the taxable year under Section 210, Act of 1917	$82,894.16
Amount of taxes for the second six months of the taxable year under Section 301, Act of 1918	183,559.44
Total assessment for fiscal year ended June 30, 1918	266,453.60

Your original return shows that assessment was made on August, 1918, list, page 8, line 5	240,077.31
Indicating an additional assessment	$26,376.29

Your application for assessment under the provisions of Section 210 of the 1917 Act was allowed, resulting in a tax of $82,894.16 for the proportionate part of your fiscal year covered by the period from July 1, 1917, to December 31, 1917, and is final.

That part covered by the period from January 1, 1918, to December 31, 1918, for which application is made for assessment under the provisions of Sections 327 and 328 [fol. 13] of the 1918 Act, is payable, until definitely determined, at the rate of fifty per cent of net income as war profits and excess profits taxes which is $161,725.77, and an income tax of twelve per cent of income, less war profits and excess profits taxes $161,725.77. Interest on obligations of the United States not exempt, $501.00; and specific allowance of $1,000.00 or a total deduction before computing the twelve per cent tax of $163,226.77, indicating $160,224.77 subject to income tax of $19,226.97, resulting in a present settlement as follows:

Total tax under 1917 Act		$82,894.16
Fifty per cent tax under 1918 Act:		
War and excess profits taxes	$161,725.77	
Income tax @ 12%	19,226.97	
		180,952.74
Amount of tax payable		$263,846.90
It appears an actual cash payment has been made to the amount of		165,788.32
Indicating a balance due of		$98,058.58

Any cash payment made in excess of the amount stated above will apply against the balance shown to be due. You will be advised by the collector of Internal Revenue for the Fifth District of Kentucky as to the time and manner of payment of the additional amount due.

Respectfully, (Sgd.) J. H. Callan, Assistant to the Commissioner.

[fol. 14] EXHIBIT C TO AMENDED PETITION

Duplicate

Treasury Department, U. S. Internal Revenue.
Form 1-17.
Collector's Office, District of Kentucky, at Louisville, Ky.
Date: 10/4/1919.
Due date: 10/14/1919.
Elwood Hamilton, Collector of Internal Revenue.
Wright & Taylor, 133 W. Main St., Louisville, Ky.

Notice and Demand for Tax and Receipt—Regular Taxes

List 23B-1909, Aug. 9-9-3, year-month-folio-line #199-A:2 letter 7-18-19.

Character of tax liability: For period ended fiscal year 6-30-18, taxes, penalties, etc.

Amount of tax	$26,376.29
50 per cent penalty	
100 per cent penalty	
5 per cent penalty	
Total	26,376.29

Received payment.

——, Collector of Internal Revenue.

2-2803.

[fol. 15] EXHIBIT D TO AMENDED PETITION

Copy

Treasury Department, Office of Commissioner of Internal Revenue, Washington

Income Tax Unit.
IT:R:CC.
Certificate of Overassessment Number: 687,901.
Allowed: $3,634.73.
Schedule No. 11981.

Wright and Taylor, Inc., Louisville, Kentucky.

SIRS: An audit of your income tax return, Form 1120, and a consideration of all the claims (if any) filed by you

for the fiscal year period ended June 30, 1920 indicates that the tax assessed for this year was in excess of the amount due:

Original assessment Acct. #402722	$11,794.40
Corrected tax liability	8,159.67
Overassessment	$3,634.73

The above adjustment is due to the allowance of additional depreciation in the amount of $16,534.87.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated: if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Respectfully, J. G. Bright, Deputy Commissioner, by (Sgd.) F. R. Clente, Head of Division.

Abated: $——.
Credited: $3,634.73.
Year: Fisc. 6/30/18.
Account No. Aug. 18—5.
Refunded: $——.
Instructions executed. Signature: Robert H. Lucas, Collector Int. Rev., —— District, of Nov. 25, 1924.

[fol. 16] EXHIBIT E TO AMENDED PETITION

Copy

Treasury Department, Office of Commissioner of Internal Revenue, Washington

Income Tax Unit.
IT:R:CC.
Certificate of Overassessment Number: 687,990.
Allowed: $399.03.
Schedule No. 11981.

Wright and Taylor, Inc., Louisville, Kentucky.

Sirs: An audit of your income tax return, Form 1120, and a consideration of all the claims (if any) filed by you

for the fiscal year period ended June 30, 1922 indicates that the tax assessed for this year was in excess of the amount due:

Original assessment, Acct. #401,917	$16,605.87
Corrected tax liability	16,206.84
Overassessment	$399.03

The above adjustment is due to the allowance of additional depreciation in the amount of $18,688.01.

The amount of the overassessment will be abated, credited, or refunded as indicated below (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Respectfully, J. G. Bright, Deputy Commissioner, by (Sgd.) F. R. Clente, Head of Division.

Refunded: $——.
Abated: $——.
Credited: $399.03.
Year: Fisc. 6/30/18.
Account No. Aug. 18—5.
Instructions executed. Signature: Robt. H. Lucas, Collector Int. Rev., —— District, of Nov. 25, 1924.

[fol. 17] IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 8, 1929

Comes now the defendant, Robert H. Lucas, Collector of Internal Revenue for the United States of America, Fifth District of Kentucky, and for answer to so much of plaintiff's petition as he is advised he should make answer to admits that the plaintiff, Wright & Taylor, is a corporation organized and existing under and by authority of the laws of the State of Kentucky, with authority to sue and be sued, in its corporate name, and that its principal office and place of business is in Louisville, Kentucky.

Defendant admits that he is and at all times mentioned herein a duly appointed and acting collector of Internal

Revenue for the United States of America for the Fifth District of Kentucky, and as such demanded and collected the sums of money hereinafter referred to, which said sums are sought to be recovered in this action.

Defendant admits that the amount in controversy in this action exceeds the sum of $3,000.00, exclusive of interests and costs and that the defendant, Robert H. Lucas, is a resident and citizen of Jefferson County, Kentucky.

Defendant admits that heretofore the plaintiff made a return of gross and net income collected by it for the fiscal year ending June 30, 1918, as required by the Revenue Act of 1917 and the Revenue Act of 1918 and that its said Return for the year ending June 30, 1918, under the Revenue Act of 1917 was filed during the month of August, 1918; and that on or about June 14, 1919, it filed a supplemental return for the fiscal year ended June 30, 1918, as required by the Revenue Act of 1918; and that its return filed in August, 1918, for the fiscal year ending June 30, 1918, as required by the Revenue Act of 1917, showed a total tax due, computed under the provisions of the Revenue Act of 1917 and the Revenue Act of 1916, as amended by the Revenue Act of 1917 without the benefit of Section 210 of the said Revenue Act of 1917, of $240,077.31; admits that plaintiff thereupon made application to the Commissioner of Internal Revenue to have its profits tax for the year 1917 portion of the fiscal year ending June 30, 1918, determined and assessed in accordance with the provisions of Section 210 of the Revenue Act of 1917; and that in December, 1917, after an oral conference in the office of the Commissioner of Internal Reveune at Washington, D. C., it was notified that its application for the assessment of its profits tax under Section 210 of the Revenue Act of 1917 was granted, and that the total tax due for the year ending June 30, 1918, computed under [fol. 18] the Revenue Act of 1917 was $165,788.32, of which one-half, or $82,894.16 was the amount due for the 1917 half of the year ending June 30, 1918; and that in December, 1918, it filed a claim for abatement of $74,288.89 income and profits taxes for the year ending June 30, 1918, this being the difference between the amount shown to be due on the original return and the total tax due after the profits tax had been computed by the Commissioner of In-

ternal Revenue under Section 210 of the Revenue Act of 1917.

Defendant admits that on or about June 14, 1919, the plaintiff filed a supplemental return for the year ending June 30, 1918, as required by the Revenue Act of 1918, and that said supplemental return showed an additional income and profits tax for the year 1918, half of the year ending June 30, 1918, under the provisions of the Revenue Act of 1918 of $85,186.71; and that of this amount $31,462.86 was paid at the time the said supplemental return was filed, and that on the same date a claim for the abatement of the balance, to wit, $53,723.85, was filed with the Collector of Internal Revenue at Louisville, Kentucky; and that in September, 1919, it received notice of an additional assessment of income and profits taxes for the year ending June 30, 1918, in the sum of $26,376.29, and at the same time payment of this amount was demanded by the Collector of Internal Revenue, Louisville, Kentucky, and the plaintiff filed with said Collector of Internal Revenue, at Louisville, Kentucky, a claim for abatement of the entire amount of $26,376.29.

Defendant admits that no other assessments were made and that no steps were taken or proceedings instituted to effect collection of any of the above amounts, or any part thereof, until August 27, 1925, at which time the defendant, Robert H. Lucas, Collector of Internal Revenue at Louisville, Kentucky, demanded payment of $136,507.05, together with a large amount of interest, as additional income and profits taxes alleged to be due for the fiscal year ending June 30, 1918; and that after the said defendant, Robert H. Lucas threatened to seize and sell the property of the plaintiff unless payment was made, the plaintiff paid the defendant, on September 4, 1925, the sum of $62,319.16, plus interest of $22,490.35, making a total payment of $84,809.51; but denies that the entire amount was paid under protest and duress in order to avoid the carrying out of the defendant's threat to seize and sell the plaintiff's property.

[fol. 19] Defendant admits that on or about September 30, 1925, plaintiff filed with the defendant, Robert H. Lucas, Collector of Internal Revenue at Louisville, Kentucky, a claim for refund of the entire sum of $84,809.51, referred to above; that more than six months have elapsed since said

claim was filed and that said claim for refund has never been allowed or rejected by the defendant, or the Commissioner of Internal Revenue, or any one else authorized to pass on said claim.

Defendant denies that at the time the taxes or interest herein sued for were paid by the plaintiff to the defendant under protest or duress; or there was no waiver or other agreement extending the time for assessment or collection of any income or profits taxes beyond that fixed by the statute, then in effect; but admits that on or about December 13, 1923, the plaintiff had signed such a waiver or agreement and delivered it to the Commissioner of Internal Revenue, but denies that said waiver or agreement by its terms or as one of the conditions therein expired one year from date thereof or that said waiver or agreement expired on December 13, 1924, or any date prior to the filing of plaintiff's petition.

Defendant admits that by the terms of Section 250 (d) of the Revenue Act of 1921, it is provided that no suit or proceeding for the collection of any income or profits taxes claimed to be due for any fiscal year ending in the year 1918 shall be begun after the expiration of five years after the return was filed, and that the plaintiff filed its income and profits tax return for the year ending June 30, 1918, upon the dates herein stated, to-wit, the return for the 1917 half of the fiscal year ending June 30, 1918, was filed on or about August 15, 1918, as required by the Revenue Act of 1917, and a supplemental return for the 1918 half of the fiscal year ending June 30, 1918, was filed on or about June 14, 1919, as required by the Revenue Act of 1918, and Treasury decision #2650 promulgated thereunder; but denies that no suit or proceeding for the collection of any additional income or profits taxes for the year ending June 30, 1918, was begun prior to August 28, 1925, or that the plaintiff was threatened with a distraint proceeding unless the additional income and profits taxes of $62,319.16 plus interest in the sum of $22,490.35 sued for herein was paid; and denies that at that time, to-wit, August 22, 1925, more than five years had elapsed since the plaintiff's income and profits tax returns had been filed as required by law, or that the threatened distraint proceedings were illegal or void by [fol. 20] reason; denies that the collection of said income and profits tax for the year ending June 30, 1918 in the sum

of $62,319.16, or interest in the sum of $22,490.35 was illegal or void or the entire amount, to-wit, $84,809.51 or any sum is now due or owing to the plaintiff from the defendant, Robert H. Lucas, with interest from September 4, 1925, or from any time, or that plaintiff has demanded payment of said amount from the defendant, or that no part of same has been paid.

II

Defendant for further answer to the petition of plaintiff states that upon the filing of claim in abatement in the sum of $74,288.99 for balance due upon the original assessment of $240,077.31, and upon the filing of claim in abatement in the sum of $53,723.80, balance due made upon the filing of the supplemental return on or about June 17, 1919; upon the filing of claim in abatement for $26,376.29, for additional assessment made by the Commissioner on the return for 1918, which claims were filed on December 12, 1918, and September 15, 1919, the collection of the tax in question was stayed. The filing of claims in abatement having been made in the time required within the period for collection and assessment, and under the provisions of Section 611 of the 1928 Revenue Act the collection of $62,319.16 additional income and profits tax, plus interest of $22,490.35, upon the dates mentioned by the plaintiff was not an over-payment and the collection of same was in all respects legal and valid according to the provisions of Section 611 of the Act of 1928.

Wherefore having fully answered defendant prays that plaintiff's petition herein may be dismissed and held for naught; for his costs herein expended and for all further proper relief to which he may be entitled.

T. J. Sparks, United States Attorney. Of Counsel:
Frank A. Ropke, Ast. U. S. Attorney.

[fol. 21] In United States District Court

Reply—Filed April 8, 1929

Comes now the plaintiff, Wright and Taylor, Inc., and for reply to defendant's answer herein admits that claims in

abatement in the respective amounts of $74,288.99, $53,723.80 and $26,376.29 were filed at the times stated in said answers; but denies that collection of the taxes or any part thereof covered by said claims in abatement were stayed thereby.

Plaintiff also denies that Section 611 of the Revenue Act of 1928 made the collection of $62,319.16 additional income and profits tax plus interest $22,490.35 legal and/or valid.

Paragraph II

Plaintiff avers that the abatement claim mentioned in defendant's answers did not under the practice, prevailing at the time they were filed, stay the collection of taxes covered thereby or any part thereof, and that, in accordance with the law, the regulations then in force and the practice thereunder, said defendant Collector, notwithstanding said claims in abatement, had the legal right to demand and collect all, or any part, of said taxes at any time prior to the expiration of five years from the time the income tax return for the year involved was due.

Paragraph III

Plaintiff avers that Section 611 of the Revenue Act of 1928 does not attempt to validate or authorize retroactively the illegal action of the defendant in collecting from the plaintiff the said sum of $84,809.47, and, that if it does that such Section is in contravention to article V of the Constitution of the United States of America, in that it deprives plaintiff of its property without due process of law and is, therefore, unconstitutional, null and void.

Wherefore, having fully replied to the defendant's answer herein, the plaintiff prays as in its original petition.

S. Lyman Barber, Ward Loveless, Miller & Chevalier, Attorneys for Plaintiff.

[fol. 22] In United States District Court

Stipulation of Facts—Filed April 8, 1929

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the fol-

lowing facts shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

I

That the plaintiff is a corporation duly organized and existing under and by authority of the laws of the State of Kentucky with its principal office and chief place of business at Louisville, Kentucky.

II

That the defendant is now and has been since the 24th day of May, 1921, Collector of Internal Revenue for the Third Collection District of Kentucky, with his residence at Louisville, Kentucky, within the jurisdiction of this court, and that the tax sought to be recovered in this case was paid to the said Lucas as Collector of Internal Revenue.

III

On August 10, 1918, the plaintiff, Wright & Taylor, Inc., filed with the Collector of Internal Revenue at Louisville, Kentucky, a return of gross and net income for the fiscal year ended June 30, 1918, showing thereon a total tax liability of $240,077.31.

IV

The said sum of $240,077.31 was assessed by the Commissioner of Internal Revenue in August, 1918.

V

On March 15, 1919, the plaintiff filed a tentative return covering the six-months' period January 1, 1918, to June 30, 1918, at the rates provided by the Revenue Act of 1918, showing a tax estimated at $71,528.32 of which $17,882.08 was paid when said tentative return was filed. On June 17, 1919, plaintiff filed a completed return for the fiscal year ended June 30, 1918, showing an additional tax due for said year in the sum of $85,186.71, which amount was duly as-

[fol. 23] sessed by the Commissioner of Internal Revenue on September 12, 1919.

VI

On August, 1919, assessment list, the Commissioner of Internal Revenue assessed a further tax against the plaintiff for the year ended June 30, 1918, in the sum of $26,376.29.

VII

On September 15, 1919, the plaintiff filed with the Collector of Internal Revenue at Louisville, Kentucky, a claim for abatement of the entire amount of $26,376.29, and after the filing of said abatement claim neither defendant, not any other person representing the United States Government, took any steps whatsoever for the collection of said taxes covered by said abatement claim, until on or about, to-wit, September 8, 1925, when said defendant collected of plaintiff the sum of $84,809.47 as set out in paragraph ten (10) hereof.

VIII

Of the assessment of $240,077.31 made in August, 1918, the plaintiff paid the Collector of Internal Revenue on December 12, 1918, the sum of $165,788.32 and on the same date a claim for abatement in the sum of $74,288.99 was filed by the plaintiff. On November 26, 1924, a further sum of $4,033.76 was paid on said assessment by the crediting overassessments due and owing to plaintiff; and on January 27, 1927, $70,255.23 was abated on I. T. U. Schedule 2067.

IX

Of the amount of $85,186.71 shown on the supplemental return for the fiscal year ended June 30, 1918, as required by the Revenue Act of 1918, which was filed by the plaintiff on June 17, 1919, the sum of $31,462.86 was paid on June 17, 1919. On September 15, 1919 a claim for abatement of $53,824.85 was filed with the Collector of Internal Revenue at Louisville, Kentucky, and after the filing of said abatement claim neither defendant, nor any other person representing the United States Government took any steps whatsoever for the collection of said taxes covered by said abate-

ment claim, until on or about, to-wit, September 8, 1925, when said defendant collected of plaintiff the sum of $84,809.47 as set out in paragraph (10) hereof.

[fol. 24]

X

On or about September 8, 1925, the defendant collected from the plaintiff the sum of $84,809.47, all of which was paid under protest and duress, which consisted of $62,319.12 principal, and $22,409.35 interest, the amount of the principal sum having been previously assessed within the time required by law. No prior suit or proceeding had been begun before that time for the collection of said tax and interest or any part thereof.

XI

On, to-wit, September 30, 1925, the plaintiff duly filed a claim for refund for the sum of $84,809.51 in accordance with the provisions of law applicable thereto. No part of the said claim for refund has ever been allowed or rejected by the Commissioner of Internal Revenue or any other person.

XII

No part of the said sum of $84,809.47 has ever been paid to the plaintiff by the defendant or any one else, although demand for this amount has been made upon the defendant.

XIII

On or about December 13, 1923, the plaintiff signed and delivered to the Commissioner of Internal Revenue a waiver consenting to the extension of time for the assessment of any additional income or profits taxes which might be due for the fiscal year ended June 30, 1918, for a period of one year from the date said waiver was signed. No other waiver consenting to the extension of time for the assessment and/or collection of any additional income or profits taxes for the fiscal year ended June 30, 1918, was ever filed with the Commissioner of Internal Revenue by or on behalf of the plaintiff.

Miller & Chevalier, Attorneys for Plaintiff. Frank A. Ropke, Asst. U. S. Atty., Attorneys for Defendant.

[fol. 25] IN UNITED STATES DISTRICT COURT

OPINION—Rendered July 26, 1929

This is a suit to recover income and profits taxes for the fiscal year ended June 30, 1918, collected by duress from the plaintiff after the period of limitation for collection had expired. The facts are stipulated and the case has been submitted to the court for determination without the intervention of a jury. Briefly stated, the facts are these:

The plaintiff, a corporation, made its income tax returns on a fiscal year basis, its fiscal year ending on June 30th. In August, 1918, it made its income and profits tax return for the fiscal year ended June 30, 1918, and the amount shown to be due by that return, after the allowance by the Commissioner of certain abatements and after the crediting of certain overpayments on previous years, was paid and is not here in controversy.

Pursuant to the provisions of the Revenue Act of 1918, approved February 24, 1919, the plaintiff, on March 15, 1919, filed a tentative supplemental return for the fiscal year ended June 30, 1918, and on June 17, 1919, filed a complete supplemental return for the fiscal year ended June 30, 1918, showing an additional tax of $85,186.71 due for said fiscal year, and this amount was assessed by the Commissioner of Internal Revenue on September 12, 1919. On the August, 1919, assessment list the Commissioner of Internal Revenue assessed a further tax of $26,376.29 against the plaintiff for the same fiscal year. At the time the two supplemental returns were made the plaintiff paid in the aggregate, on account of additional tax shown to be due thereon, the sum of $49,344.88. On September 15, 1919, abatement claims in the respective amounts of $53,824.85 and $26,376.29 were filed. On December 13, 1923, plaintiff signed and delivered to the Commissioner of Internal Revenue a waiver, consenting to an extension of time for the assessment and collection of any additional income and profits taxes which might be due for the fiscal year ended June 30, 1918, for a period of one year from the date said waiver was signed.

No further steps were taken for the collection of the unpaid balance due on the assessment of September 12,

1919, or for the collection of the August, 1919, assessment until September 8, 1925, when the defendant collected from the plaintiff, under threat of distraint, the sum of $84,809.47. This sum represented the balance due on the two assessments of September 12, 1919, and August, 1919, and [fol. 26] interest. No suit or proceeding of any character had been begun prior to September 8, 1925, for the collection of said tax and interest, or any part thereof.

On September 30, 1925, plaintiff filed a claim for the refund of said sum of $84,809.47, and the Commissioner of Internal Revenue having failed to act on this claim within six months from the date of its filing, this suit was filed on April 14, 1927.

From the foregoing statement it is apparent that under the applicable limitation statutes, and giving full effect to the year's extension granted by the waiver signed December 13, 1923, the collection of this $84,809.47 became barred on December 13, 1924, and that on September 8, 1925, when same was collected, the defendant was without authority to enforce collection, either by distraint or suit. Bowen v. New York Albany Lighterage Co., 273 U. S. 346; Russell v. United States, 278 U. S. 181. This is admitted by the defendant, and, unless Section 611 of the Revenue Act of 1928 applies to the situation here, the plaintiff is entitled to recover. Section 611 of that act is as follows:

"If any internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) was, within the period of limitation properly applicable thereto assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part thereof was stayed, then the payment of such part (made before or within one year after the enactment of this act) shall not be considered as an over-payment under the provisions of Section 607 relating to payments made after the expiration of the period of limitation on assessment and collection."

Section 607 of the Act of 1928 provides:

"Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this act) after the expiration of the period of limitation properly applicable thereto, shall

be considered an overpayment and shall be credited or refunded to the taxpayer, if claim therefor is filed within the period if limitation for filing such claim."

It is admitted in this case that the assessment was made prior to June 2, 1924, that a claim in abatement was filed, and that pending decision in the claim in abatement the [fol. 27] Collector made no attempt whatever to collect the tax assessed. The plaintiff contends, however, that the mere voluntary postponement by the Collector of collection of the tax assessed, pending decision on the claim in abatement, is not a stay of collection within the meaning of Section 611. It is insisted that the stay contemplated in that Section is a compulsory stay, such as was provided by Section 279 of the Revenue Act of 1924, which provided that a claim in abatement—

"—shall be accompanied by a bond in such amount not exceeding double the amount of the claim and with such surety as the Collector deems necessary, conditioned upon the payment of so much of the amount of the claim as is not abated, together with interest thereon as provided in Subdivision (c) of this section. Upon the filing of such claim and bond, the collection of so much of the amount assessed as is covered by such claim and bond shall be stayed pending the final disposition of the claim."

Section 611, by its express terms, deals with taxes assessed under revenue acts in force prior to the effective date of the Revenue Act of 1924. Therefore, it seems to me that a review of the history of the use of claims in abatement under the Acts of 1916, 1917, 1918 and 1921, and the provisions of those acts in relation to such claims, and the regulations of the Treasury Department under which those acts were administered, will be helpful in arriving at the true meaning of Section 611. The Acts of 1916, 1917 and 1921 contain no provision whatever for the filing of claims in abatement, or for staying collection of the tax pending decision on claims in abatement, and the only provision with reference to claims in abatement contained in the 1918 Act is Paragraph 14 of Section 234, which authorized a taxpayer, at the time of filing his return for the taxable year 1918, to file a claim in abatement, based on the fact that he

had sustained a substantial loss arising from shrinkage in inventory value, &c. during such taxable year. This section further provides:

"In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, [fol. 28] with surety satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest."

Thus it will be observed that when the Act of 1928 was enacted the only statutory provision in any of the revenue acts affected by the provisions of Section 611 was the one contained in the Act of 1918, which specifically provided for the execution of a bond as a condition precedent for staying collection pending decision on a claim in abatement. It is apparent, however, that Section 611 is not restricted in its operation to the special claim in abatement and the stay of collection thereunder provided for in the Act of 1918, because Section 611, by its express terms, operates in those cases where the stay was granted without bond, as well as in those cases where it was granted with bond. While neither the Acts of 1916, 1917, 1921, nor the Act of 1918 except as hereinbefore pointed out, made any provision for the filing of claims in abatement, yet Section 3220 of the Revised Statutes, as amended and re-enacted by those acts, gave to the Commissioner ample authority to abate taxes illegally or erroneously assessed. Each of those acts gave to the Commissioner of Internal Revenue the authority, with the approval of the Secretary of the Treasury, to make rules and regulations for the enforcement of its provisions, and it is well settled that these rules and regulations, if not in conflict with the law, have the force and effect of law. By virtue of this authority Regulations 33 were promulgated for the administration of the Revenue Acts of 1916 and 1917, Regulations 45 for the administration of the Revenue Act of 1918, and Regulations 62 for the Act of 1921. Each of these regulations made specific provision for the filing of claims in abatement. In none of these regulations, however, was any provision made for the execution of bond, nor was there any manda-

tory provision that collection must be or must not be stayed pending decision on a claim in abatement. Each of these regulations however, contain a provision similar to that found in Article 1032 of Regulations 45, which declares:

"The filing of a claim in abatement does not necessarily operate as a suspension of the collection of the tax or make it any less the duty of the Collector to exercise due diligence to prevent the collection of the tax being jeopardized. [fol. 29] He should, if he considers it necessary, collect the tax and leave the taxpayer to his remedy by a claim for refund."

See: Article 261, Regulation 33; Article 1032, Regulations 45; Article 1032, Regulations 62.

It is thus clear that, inferentially, the regulations authorized the Collectors to postpone the collection of the tax pending decision on the claim in abatement, unless such postponement, in the judgment of the Collector, would jeopardize the collection of the amount finally determined to be due, and it is common knowledge that such was the usual practice. Sometimes a Collector would demand a bond as a consideration for postponement of collection; sometimes, when he had reason to doubt the solvency of a taxpayer, collection was immediately enforced; but, as a usual thing, if the Collector had no doubt of the solvency of the taxpayer, collection was withheld until final action on the claim.

It thus happened that in many cases arising under the Revenue Acts of 1916, 1917, 1918 and 1921 limitation had run against collection of the tax by the time the claim in abatement had been disposed of, and in those cases where bonds had not been exacted the taxpayer was resisting collection or paying under protest, on the claim that the tax was barred by limitation. Prior to the decision of the case of Bowen v. New York & Albany Lighterage Co., supra, those charged with the collection of income and profits taxes went on the assumption that the limitation provision of the respective acts did not apply to distraints. See—I. T. 1446, p. 218, Internal Revenue Cumulative Bulletin 1-2. This, no doubt, made the Collectors generally more willing

to postpone collection of an assessment pending decision on a claim in abatement that they otherwise would have been.

Following the decision of the Supreme Court in the case of Bowen v. New York & Albany Lighterage Company, a great many taxpayers who had failed to get relief on their claims in abatement, and who had paid their taxes under threat of distraint after limitation had run, were seeking to secure refunds, on the ground that collection had been forced from them illegally. This situation was at its height when Congress came to consider the enactment of the Revenue Act of 1928, and it was to prevent taxpayers taking advantage of the delay occasioned by their having filed claims in abatement that Section 611 was enacted. The purpose of Section 611 is very clearly portrayed in the ex- [fol. 30] planation of that section contained in the report of the Ways & Means Committee made when that Committee reported the bill to the House of Representatives. This report stated:

"Prior to the enactment of the Revenue Act of 1924, it was the administrative practice to assess immediately additional taxes determined to be due. Upon the assessment, taxpayers were frequently permitted to file claims in abatement with the Collector and thus delay the collection until the claim in abatement could be acted upon. If this practice had not been followed, undue hardship undoubtedly would have been imposed upon the taxpayer. It was supposed that there was no limitation upon the collection by distraint of the amount ultimately determined to be due. However, the Supreme Court has recently held in a case in which the period for assessment expired prior to the enactment of the 1924 Act, that the period for collection was limited to five years from the date on which the return was filed. Decisions upon claims in abatement are being made every day. Amounts have been paid, are being paid, by the taxpayer even though the statute of limitations may have run. Exceptionally large amounts are involved. Accordingly, it is of utmost importance to provide that the payments already made should not be refunded. In order to prevent inequality, it is also provided that the amounts not yet paid may be collected within a year after the enactment of the new Act.

Your Committee appreciates the fact that this provision will probably be subjected to severe criticism by some of the taxpayers affected. However, it must be borne in mind that the provision authorizes the retention and collection only of amounts properly due, and merely withdraws the defense of the statute of limitations. If it is determined that the amount paid is in excess of the proper tax liability, computed without regard to the statute of limitations, such excess will constitute an overpayment which may be refunded or credited as in the case of any other overpayment. (Report No. 2, 70th Congress, 1st Session, p. 34.)"

Considering the language of Section 611 in connection with the provision of the Revenue Acts under which the assessments affected by that section were made, the regula- [fol. 31] tion and practice of the Treasury Department with reference to claims in abatement under those acts, and the purpose sought to be accomplished, as shown by the Committee Report, supra, there can not be any doubt that it was the purpose of Congress through this section to prohibit refunds being made from the Treasury in cases similar to the one at bar. There is no merit in the plaintiff's suggestion that Section 611 is only an inhibition against the Commissioner of Internal Revenue making refunds in such cases, but that it has no application in a suit against a Collector such as the one here. Such a construction of this section would lead to an unconscionable result. When he collected the tax, the Collector was required by law to immediately pay same into the Treasury. He had no right to retain the money pending the outcome of threatened litigation over the collection. The Government has had the benefit of the collection. Yet, if the plaintiff's theory is correct, Congress intentionally left Collectors open to suit and judgment in such cases as the one at bar, but denied them the right of reimbursement for any judgments thus obtained. It seems to me that the mere suggestion of the result of such a construction forces us to reject it.

I must therefore conclude that Section 611 was intended by Congress to take away from those taxpayers who had filed claims in abatement of assessments made prior to June 2, 1924, and who had, as the result of filing such claims, secured a postponement of payment pending decision on the claims, and who had been forced after the run-

ning of limitation to pay the tax thus assessed, the right to rely upon the fact that collection had been forced after the running of limitation as a basis for recovering a refund, whether the suit for such recovery is against the Collector who made same or directly against the United States. Having reached this conclusion, it remains to be determined if the statute so construed deprives plaintiff of its property rights, in violation of the Fifth Amendment to the Federal Constitution, as contended by the plaintiff.

It is well settled that no one has a vested right to rely upon a statute of limitation to defeat a debt or other personal obligation. The Legislature which gave the right may take it away, even after the bar has become complete. Campbell v. Holt, 115 U. S. 620. If this suit were turned around and were one by the United States against the plaintiff, to collect the tax involved here, the plaintiff certainly could not be heard to plead a statute of limitation [fol. 32] formerly in force but which had been repealed before the bringing of the suit, even though the bar under the former statute was complete prior to its repeal and prior to filing the suit. If a taxpayer has no vested interest in the defense of the statute of limitation, it is difficult to understand how he can have any vested interest in the right to recover taxes from the Collector, on the sole ground that payment was coerced after limitation had run. It seems to me that if his right to rely upon the statute as a defense may be destroyed by repeal or modification, his right to rely upon the statute as a basis for recovery may likewise be destroyed by repeal or modification. There can be no doubt that Congress had full power, immediately before the taxes were collected in this case, to have passed a law, denying to taxpayers situated as the plaintiff was the right to rely upon the statute of limitation, although the statute had run at the time of the passage of such law, Neither can there be any doubt of the soundness of the proposition that the Collector, in collecting taxes, acts as an agent of the United States. Furthermore, it is well settled that where an agent, without precedent authority, has exercised, in the name of a principal, a power which the principal had the capacity to bestow, the principal may ratify and affirm the unauthorized act and thus retroactively give it validity, when rights of third persons have not inter-

vened. United States v. Heinszen & Co., 206 U. S. 370; Rafferty v. Smith Bell Co., 257 U. S. 226.

In this case we have the defendant, as Collector, acting as the agent of the United States. At a time when he was not authorized so to do, but at a time when the Congress of the United States had full authority to authorize him so to do, he collected, after limitation had run, the taxes involved in this case, and Congress had the power then and has had that power at all times since then to ratify the unauthorized collection, and that is what it did do, in effect, by the enactment of Section 611. It is true, when the plaintiff paid the taxes under duress, after the running of limitation, a right accrued to it to recover the taxes so paid, but that right was necessarily limited by the superior right of Congress to ratify the unauthorized collection.

As pointed out in the case of United States v. Heinszen, supra:

"To hold to the contrary would be to say that whilst the unauthorized act of an officer done on behalf of the United [fol. 33] States was subject to ratification by the United States, yet if the officer acted without authority, the act when performed annihilated the power to ratify; that is, that the very condition which engendered the power destroyed it."

The fact that plaintiff had brought suit on its claim prior to the enactment of Section 611 did not change the nature of plaintiff's right nor impair the paramount right of Congress to ratify.

In discussing how far the bringing of actions would operate to deprive the Government of the power to enact ratifying statutes which, if the action had not been brought, would have been valid, Cooley in his Constitutional Limitations (7th Ed. p. 543) says:

"Nor is it important in any of the cases to which we have referred that the legislative act which cures the irregularity, defect or want of original authority was passed after suit brought, in which such irregularity or defect became matter of importance. The bringing of suit vests in a party no right to a particular decision."

This quotation was cited with approval in the Heinszen case, supra.

For the reasons stated, I am convinced that Section 611 controls the case at bar, and therefore plaintiff's petition will be dismissed and costs awarded to the defendant. A judgment conforming to the views herein expressed may be prepared by counsel and presented for entry.

July 26, 1929.

S. Lyman Barber and Miller & Chevalier, Louisville, Ky., Attorneys for Plaintiff. Frank A. Ropke, Asst. U. S. Atty., Louisville, Ky.; T. J. Sparks, U. S. Atty, Louisville, Ky.; C. M. Charest, General Counsel Bureau Internal Revenue, Washington, D. C., Attorneys for Defendant.

[fol. 34] IN UNITED STATES DISTRICT COURT

JUDGMENT AND FINDINGS OF FACT—Aug. 21, 1929

The above styled case having been submitted to the court upon pleadings and stipulation of facts and the court being advised in the premises is of the opinion for the reasons stated in the written opinion filed herein that plaintiff is not entitled to the relief sought and it is therefore ordered that plaintiff's petition be dismissed and held for naught, and that defendant recover of the plaintiff its costs herein expended, to which ruling of the court said plaintiff, by counsel, excepts and objects.

In reaching this conclusion, the court arrived at the following findings of fact:

I

That the plaintiff is a corporation duly organized and existing under and by authority of the laws of the state of Kentucky, and that said corporation filed its income tax returns on a fiscal year basis, its fiscal year ending on June 30th.

II

That the defendant has been since the 24th day of May, 1921 Collector of Internal Revenue for the collection dis-

trict of Kentucky, within the jurisdiction of this court, and that the tax sought to be recovered in this case was paid to said defendant as Collector of Internal Revenue.

III

That pursuant to the provisions of the revenue act of 1918, approved February 24, 1919, plaintiff filed tentative supplemental return for the fiscal year ended June 30, 1918, on March 15, 1919. On June 17, 1919, plaintiff filed a complete supplemental return for the fiscal year ended June 30, 1919, showing an additional tax of $85,186.71, due for said fiscal year, which said amount was assessed by the Commissioner of Internal Revenue on September 12, 1919. At the time the two supplemental returns were made, the plaintiff paid in the aggregate, on account of additional tax shown to be due thereon the sum of $49,344.88.

IV

That on August, 1919, assessment list the Commissioner of Internal Revenue assessed a further tax of $26,376.29 against the plaintiff for the same fiscal year.

[fol. 35]

V

On September 15, 1919, abatement claims in the respective amounts of $53,824.85 and $26,376.29 were filed.

VI

On December 13, 1923, plaintiff signed and delivered to the Commissioner of Internal Revenue a waiver consenting to an extension of time for the assessment and collection of any additional taxes which might be due for the fiscal year ended June 30, 1918 a period of one year from the date said waiver was signed.

VII

That no further steps were taken for the collection of the unpaid balance due on the assessment of September 12, 1919, or for the collection of the August, 1919, assessment until September 8, 1925, when the defendant collected from the plaintiff, under threat of distraint, the sum of

$84,809.47; this sum representing the balance due on the two assessments September 12, 1919, and August, 1919, plus interest.

VIII

No suit or proceeding of any character had been begun prior to September 8, 1925, for the collection of said tax and interest, for any part thereof.

IX

On September 30, 1925 the plaintiff filed a claim for the refund of said sum of $84,809.47, and the Commissioner of Internal Revenue failed to act on said claim within six months from the date of its filing, and this suit was filed on April 14, 1927.

August 21-1919.

[fol. 36] In United States District Court

Petition for Appeal—Filed Sept. 10, 1929.

To the Honorable Charles I. Dawson, District Judge:

The above named plaintiff, feeling aggrieved by the judgment rendered and entered in the above entitled cause on the twenty-first day of August, A. D., 1929, does hereby appeal from said judgment to the Circuit Court of Appeals for the Sixth Circuit for the reasons set forth in the Assignment of Errors, filed herewith, and prays that its appeal be allowed, and that citation be issued as provided by law, and that the transcript of record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Sixth Circuit under the rules of said Court in such causes made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.

Ward Lovelace, S. Lyman Barber, Donald V. Hunter, Miller & Chevalier, 525 Marion E. Taylor Bldg., Lousiville, Kentucky. Attorneys for Petitioner.

In United States District Court

Assignment of Errors—Filed Sept. 10, 1929

Now comes the said plaintiff, and assigns errors in the decision of said District Court as follows:

1. The Court erred in holding that Section 611 of the Act of 1928 operated to deprive this plaintiff, of a right to recover from the defendant the sum of $84,809.47 with interest thereon.

[fol. 37] 2. The Court erred in failing to hold that Section 611 of the Revenue Act of 1928 had no application in the instant case in that the collection of taxes and interest to the amount of $84,809.47 was not "stayed" as by said Section required.

3. The Court erred in holding, in effect, that the illegal collection of the sum of $84,809.47 from the plaintiff, by the defendant, on September 8, 1925, did not give rise to a right of action in said plaintiff which it was beyond the power of Congress to confiscate or destroy.

4. The Court erred in failing to hold that the illegal collection by the defendant of the sum of $84,809.47 gave to the plaintiff a right of action which was property and which could not be taken away in violation of the provisions of the Constitution, by an Act of Congress purporting to bar recoveries in the Courts of amounts so illegally collected.

5. The Court erred in holding that Section 611 of the Revenue Act of 1928 was a ratification by the Congress of the illegal acts of the defendant, complained of in this suit, and that Congress had authority under the Constitution so to ratify.

6. The Court erred in failing to hold that the plaintiff was entitled to recover from the defendant the sum of $84,809.47 with interest and costs.

Wherefore, the plaintiff, Wright & Taylor, Incorporated, prays that the judgment of the District Court of the United States for Western District of Kentucky be reversed and that said District Court be directed to enter judgment for plaintiff.

Ward Loveless, S. Lyman Barber, Donald V. Hunter, Miller & Chevalier, 525 Marion E. Taylor Bldg., Louisville, Kentucky, attorneys for petitioner.

[fol. 38] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Sept. 10, 1929

This day came the plaintiff, Wright & Taylor, incorporated, and tendered its petition for appeal herein to the Circuit Court of Appeals for the Sixth Circuit, accompanied by its written assignment of errors, which are now ordered filed, and the court having considered same, it is ordered that said appeal to the Circuit Court of Appeals for the Sixth Circuit be and the same is hereby allowed, upon the plaintiff giving bond, as required by law, in the sum of $300.00.

September 10, 1929.

Citation in usual from showing service on Frank A. Ropke, omitted in printing.

[fols. 39 & 40] Bond on appeal for $300.00, approved September 17, 1929, omitted in printing.

[fol. 41] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD ON APPEAL

To the Clerk of the District Court:

You are requested to prepare and transmit to the Circuit Court of Appeals for the Sixth Circuit, in accordance with the rules of said Court, as a transcript of record upon the appeal heretofore allowed in the above entitled cause, the following:

1. Petition.
2. Amended Petition.
3. Answer.
4. Reply.
5. Stipulation of Facts.
6. Opinion of the Court.

7. Judgment of the Court.
8. Petition for Appeal.
9. Assignment of Errors.
10. Order allowing Appeal.
11. Citation on Appeal with proof of Service of Citation.
12. Bond for Costs.
13. This præcipe.

S. Lyman Barber, Ward Lovelace, Donald V. Hunter, Miller & Chevalier, 525 Marion E. Taylor Bldg., Louisville, Ky., Attorneys for Appellant.

Receipt of a copy of the foregoing præcipe this 17 day of A. D. 1929, is hereby acknowledged.

T. J. Sparks, Attorney for Appellee.

[fol. 42] Clerk's certificate to foregoing transcript omitted in printing.

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPEARANCE OF COUNSEL

(Filed October 8, 1929)

To the Honorable, The Clerk of the Court:

You will please enter the appearance of the undersigned as counsel for the appellant in the above entitled case.

S. Lyman Barber,
Donald V. Hunter,
Ward Loveless,

Of the Law Firm of
Miller & Chevalier,
525 *Marion E. Taylor Bldg.,*
Louisville, Kentucky.

APPEARANCE OF COUNSEL

(Filed December 30, 1929)

J. W. Menzies,
Clerk of said Court:

Please enter my appearance as Counsel for the Appellee.

Frank A. Ropke,
Asst. U. S. Attorney.

CAUSE ARGUED AND SUBMITTED

(March 12, 1930—Before: Denison, Moorman and Hicks, JJ.)

This cause is argued by D. V. Hunter for Appellant and by L. L. Gibson for Appellee and is submitted to the Court.

JUDGMENT

(Filed November 10, 1930)

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed November 10, 1930)

Before DENISON, MOORMAN and HICKS, Circuit Judges.

HICKS, Circuit Judge: On March 15 and June 17, 1919, Wright & Taylor, Inc., appellant, filed supplemental income and profit tax returns for the fiscal year ending June 30, 1918. The Commissioner made assessments thereon and on Sept. 15, 1919, appellant filed abatement claims in the respective sums of $53,824.85 and $26,376.29. On Dec. 13, 1923, appellant executed a waiver extending for one year the time for the proper assessment and collection of the taxes. No further steps were taken by the Government or any of its agents for the collection of the taxes covered by the abatement claims until Sept. 8, 1925, when appellee collected under duress the sum of $84,809.47, the unpaid balance on the August and September 1919 assessments. This suit was brought to recover the amount so paid. Had the case been determined before the passage of the Revenue Act of 1928 appellant would have been entitled to judgment because

on Sept. 8, 1925, appellee had no authority to receive the money. The claim had been barred by the statute of limitations of five years found in Sec. 250 (d) of the Revenue Act of 1921 (*Bowers* v. *N. Y. & Albany Co.*, 273 U. S. 346) and the liability discharged (Sec. 1106 [a], Rev. Act of 1926, 44 Stat., Part 2, 113). The Bowers case not only prevented the collection of a large volume of taxes but subjected the Government to suit for amounts paid after the bar of the statute had fallen. To counteract this eventuality Congress incorporated in the Revenue Act of 1928 Sections 607,[1] 611,[2] and 612.[3] Sec. 612 broadly repealed Sec. 1106 (a),[4] supra. Sec. 607, in harmony with the Bowers case, provided that any tax paid after the expiration of the applicable limitation period shall be considered an overpayment and refundable if properly claimed, but Sec. 611 made an important exception. It provided that if the assessment was made before June 2, 1924, and if then a claim in abatement, with or without bond, was filed and if the collection of any part thereof was stayed then a payment made thereon after the expiration of the limitation period for collection shall not be considered as an overpayment under the provisions of Sec. 607.

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[1] Revenue Act of 1928:

"Sec. 607. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim." 45 Stat. 874, 26 U. S. C. Sec. 2607.

[2] "Sec. 611. If any internal-revenue tax (or any interest, penalty, additional amount or addition to such tax) was, within the period of limitation properly applicable thereto, assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part thereof was stayed, then the payment of such part (made before or within one year after the enactment of this Act) shall not be considered as an overpayment under the provisions of section 607, relating to payments made after the expiration of the period of limitation on assessments and collection." 45 Stat. 875, 26 U. S. C. 2611.

[3] "Sec. 612. Section 1106 (a) of the Revenue Act of 1926 is repealed as of February 26, 1926." 45 Stat. 875.

[4] "Sec. 1106 (a). The bar of the statute of limitations against the United States in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no credit or refund in respect of such tax shall be allowed unless the taxpayer has overpaid the tax. The bar of the statute of limitations against the taxpayer in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no collection in respect of such tax shall be made unless the taxpayer has underpaid the tax." 44 Stat. 113, Part 2, 26 U. S. C., Sec. 1249.

Appellee filed his answer after the passage of the Revenue Act of 1928 and relied upon Sec. 611. Appellant's case falls within certain provisions of that section. The assessment against it was made within five years before June 2, 1924; appellant had filed an abatement claim and payment was made after the statute of limitations had run and before the passage of the Revenue Act of 1928. However, appellant insists that Sec. 611 has no application because (1) when read in connection with Sec. 607 it only prohibited the Commissioner from making refunds and did not affect a suit against the Collector to recover amounts already paid; (2) because the collection of the tax against it was not "stayed" in contemplation of Congress; or (3) if stayed, the stay was not caused by the abatement claims. Appellant further insists that the statute is unconstitutional because it undertakes to deprive the taxpayer of vested rights by reviving a barred liability.

The first contention is far-fetched. When Secs. 607, 611 and 612 are read together their evident purpose is to counteract the Bowers decision rendered Feb. 21, 1927, in all cases similar to that of appellant. These sections constitute a solemn legislative pronouncement that internal revenue collected from taxpayers in appellant's situation "shall not be considered as an overpayment * * *." It was intended to cut off any claim for the refund of such taxes at its very roots. If there was no "overpayment" it follows that nothing was due and there was therefore no cause of action. *Daniel Reeves, Inc.* v. *Anderson,* C. C. A. 2, decided July 21, 1930; *Oak Worsted Mills* v. *U. S.,* 36 Fed. (2) 529, 536 (C. of C.).

Nor can we narrow the phrase in Sec. 611, to wit, "and if the collection of any part thereof was stayed" to a situation where the Collector was barred or prevented from proceeding with the collection of such revenue. Such a situation is non-existent so far as our examination discloses. Upon the other hand it is settled governmental policy that the collection of taxes shall not be restrained by suit in any court. (R. S. 3234, U. S. C. Tit. 26, Sec. 154.) This is true even as to an alleged illegal assessment. *Graham* v. *DuPont,* 262 U. S. 234, 255; *Ellay Co.* v. *Bowers,* 25 Fed. (2) 637, C. C. A. 2.

In 1928 Congress faced a predicament. Prior to the Bowers decision it was generally assumed that there was no limitation upon the collection of revenue by distraint. There was therefore no absolute rule touching the suspension of collection pending decision upon a claim in abatement. In such a practical matter much was left to the discretion of the Collector. (See Art. 261, Tr. Reg. 33, Rev. Act of 1916 and 1917; Art. 1032, Reg. 45, Rev. Act. 1918; and Art. 1032, Reg. 62, Rev. Act 1921.) As a favor to taxpayers and to prevent the hardships incident to the payment of a tax before its final adjustment Collectors frequently voluntarily delayed collections pending settlement of abatement claims. This delay often extended beyond five years from the taxpayer's return. After the Bowers case the Government realized that what was meant as a gift of grace was in fact an effective weapon not only of defense but of offense and that by its use many taxpayers could not only prevent the collection of taxes but recover those already paid. Sec 611 was undoubtedly enacted to remedy this situation. (See Report No. 2 of the Ways & Means Committee to the House of Representatives, 70th Congress, 1st Session, p. 32; also Report of Senate Finance Committee No. 960, 70th Congress, 1st Session, p. 42; also Report of the House and Senate Conference Committee No. 1882, 70th Congress, 1st Session, pp. 22, 23.) *Goodcell* v. *Graham*, 35 Fed. (2) 586, C. C. A. 9; *Reeves, Inc.* v. *Anderson, supra.* Further, we think that this postponement of administrative action was caused by and incident to the abatement claims. It followed their presentation and the inference is that it resulted therefrom. The stipulation of facts does not indicate the contrary. The title of Sec. 611 is "Collection Stayed by Claim in Abatement."

Passing to the question of the constitutionality of Sec. 611, the crux of the whole matter is that appellant's cause of action depends upon whether it is absolutely free from revenue taxes for 1918. If so its immunity was acquired because it had taken advantage of governmental generosity extended under a mistake of law and not because the taxes were originally invalid. Whatever strength there may be in this position we do not regard it as proof against the taxing power of the Government. *Bill-*

ings v. *U. S.*, 232 U. S. 261, 283; *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 124. If as a result of the Bowers case the appellant was entitled to reimbursement it followed that appellant would escape its share of the common burden of taxation if the Government was without a remedy. We do not think appellant was immune from a corrective enactment or that such correction was tantamount to confiscation. We cannot believe that it acquired a vested right in the error of governmental agents or that the bar of the statute under such circumstances was equivalent to a tax receipt. The formula for the remedy is not important. It may have been by a repeal of the statute of limitations as in *Campbell* v. *Holt*, 115 U. S. 620, or by new legislative construction of an old statute, as in *Stockdale* v. *Atl. Ins. Co.*, 20 Wall. 323, or by the ratification of an unauthorized act as in *Heinszen & Co.*, 206 U. S. 37[illegible]r by any or all such combined. See also *Rafferty* v. *Smith, Bell & Co.*, 257 U. S. 226, 231; *Huntley* v. *Gile*, 32 Fed. (2) 857, 859, C. C. A. 9; *Goodcell* v. *Graham, supra; Reeves, Inc.* v. *Anderson, supra.* In *United States* v. *Burden, Smith & Co.*, 33 Fed. (2) 229, C. C. A. 5, a different result was reached but that case was decided June 22, 1929. *Goodcell* v. *Graham, supra; Reeves, Inc.* v. *Anderson, supra; Oak Worsted Mills* v. *U. S., supra; 2nd National Bank* v. *U. S.*, 40 Fed. (2) 129 (C. of C.); as well as *Rockland & Rockford Line Corp'n* v. *Ham, Collector*, 38 Fed. (2) 239, and *American Glue Co.* v. *U. S.*, 42 Fed. (2) 235, from District Courts of the First Circuit, are all later and in accord with our views.

The judgment of the District Court is affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *Wright & Taylor, Inc.* v. *Robert H. Lucas, Collector of Internal Revenue,* No. 5540, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 20th day of November, A. D. 1930.

J. W. MENZIES
[SEAL] Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

[fol. 50] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 8, 1930.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,487. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 565. Wright & Taylor, Inc., petitioner, vs. Robert H. Lucas, Collector of Internal Revenue for the District of Kentucky. Petition for writ of certiorari and exhibit thereto. Filed November 28, 1930. File No. 35,487.